

Executive Summary – Enforcement Matter – Case No. 46857

City of Kenedy

RN102097839

Docket No. 2013-0961-MWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Kenedy WWTP, located at Mourning Street, approximately 500 feet east of Farm-to-Market Road 792 and 600 feet north of Main Street, Kenedy, Karnes County

Type of Operation:

Wastewater treatment plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: September 27, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$37,687

Amount Deferred for Expedited Settlement: \$7,537

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$30,150

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 46857

City of Kenedy

RN102097839

Docket No. 2013-0961-MWD-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: March 29, 2013

Date(s) of NOE(s): April 23, 2013

Violation Information

1. Failed to comply with the permitted effluent limitations for ammonia nitrogen, chlorine, and *E. coli* [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010746001 Interim and Final Effluent Limitations and Monitoring Requirements Nos. 1 and 2].

2. Failed to collect and analyze samples for *E. coli* daily average and daily maximum concentrations for the monitoring period ending July 31, 2012 [30 TEX. ADMIN. CODE §§ 305.125(1) and 319.5(b), and TPDES Permit No. WQ0010746001 Monitoring and Reporting Requirements No. 1].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By February 28, 2013, Respondent:

- a. Reduced the chlorine feed and/or increased the sulfur dioxide to address the chlorine issues and recycled the filtrate water back into the aerobic digester and pumped the anaerobic sludge back into the digester to address the ammonia nitrogen issues;
- b. Implemented better sampling methods and increased the chlorine prior to dechlorination to address *E. coli* issues; and
- c. Returned to compliance with TPDES Permit No. WQ0010746001 permitted effluent limits.

Technical Requirements:

The Order will require Respondent to:

- a. Within 30 days, update the Facility's operational guidance and conduct employee training to ensure each parameter specified in the permit is properly monitored; and
- b. Within 45 days, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

Executive Summary – Enforcement Matter – Case No. 46857

City of Kenedy

RN102097839

Docket No. 2013-0961-MWD-E

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Jennifer Graves, Enforcement Division,
Enforcement Team 1, MC R-15, (956) 430-6023; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: The Honorable Randy Garza, Mayor, City of Kenedy, 303 West Main
Street, Kenedy, Texas 78119

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	29-Apr-2013	Screening	13-May-2013	EPA Due	5-Jun-2013
	PCW	13-Jun-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Kenedy
Reg. Ent. Ref. No.	RN102097839
Facility/Site Region	13-San Antonio
Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	46857	No. of Violations	3
Docket No.	2013-0961-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jennifer Graves
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$26,250

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 65.0% Enhancement **Subtotals 2, 3, & 7** \$17,062

Notes Enhancement for four months of self-reported effluent violations, one order with denial of liability, and one order without denial of liability.

Culpability No 0.0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$5,625

Economic Benefit 0.0% Enhancement* **Subtotal 6** \$0

Total EB Amounts \$252
Approx. Cost of Compliance \$1,600
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$37,687

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$37,687

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$37,687

DEFERRAL 20.0% Reduction **Adjustment** -\$7,537

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY \$30,150

Screening Date 13-May-2013

Docket No. 2013-0961-MWD-E

PCW

Respondent City of Kenedy

Policy Revision 3 (September 2011)

Case ID No. 46857

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102097839

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	4	20%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 65%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for four months of self-reported effluent violations, one order with denial of liability, and one order without denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 65%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 65%

Screening Date 13-May-2013

Docket No. 2013-0961-MWD-E

PCW

Respondent City of Kenedy

Policy Revision 3 (September 2011)

Case ID No. 46857

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102097839

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010746001 Interim and Final Effluent Limitations and Monitoring Requirements Nos. 1 and 2

Violation Description

Failed to comply with the permitted effluent limitations, as documented during a record review conducted on March 29, 2013, and shown in the attached violation table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

A simplified model was used to evaluate ammonia nitrogen to determine whether the discharged amount of pollutants exceeded levels protective of human health or the environment. Chlorine was also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2

92 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$7,500

Two quarterly events are recommended for the quarters containing the months of January, November, and December 2012.

Good Faith Efforts to Comply

25.0%

Reduction

\$1,875

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes The Respondent achieved compliance by February 28, 2013.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$76

Violation Final Penalty Total \$10,500

This violation Final Assessed Penalty (adjusted for limits) \$10,500

Economic Benefit Worksheet

Respondent City of Kenedy
Case ID No. 46857
Reg. Ent. Reference No. RN102097839
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$1,000	31-Jan-2012	28-Feb-2013	1.08	\$4	\$72	\$76
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to reduce the chlorine feed and/or increase the sulfur dioxide to address the chlorine issues and to recycle the filtrate water back into the aerobic digester and to pump the anaerobic sludge back into the digester to address the ammonia nitrogen issues. Date required is the initial month of noncompliance. Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$76

Screening Date 13-May-2013

Docket No. 2013-0961-MWD-E

PCW

Respondent City of Kenedy

Policy Revision 3 (September 2011)

Case ID No. 46857

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102097839

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0010746001 Final Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with the permitted effluent limitations, as documented during a record review conducted on March 29, 2013, and shown in the attached violation table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

As a result of these discharges, human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 2

61 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$15,000

Two monthly events are recommended for the months of August and September 2012.

Good Faith Efforts to Comply

25.0% Reduction

\$3,750

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes

The Respondent achieved compliance by February 28, 2013.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$21,000

This violation Final Assessed Penalty (adjusted for limits) \$21,000

Economic Benefit Worksheet

Respondent City of Kenedy
Case ID No. 46857
Reg. Ent. Reference No. RN102097839
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$200	31-Aug-2012	28-Feb-2013	0.50	\$0	\$7	\$7
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to implement better sampling methods and to increase the chlorine prior to dechlorination. Date required is the initial month of noncompliance. Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$7

Screening Date 13-May-2013

Docket No. 2013-0961-MWD-E

PCW

Respondent City of Kenedy

Policy Revision 3 (September 2011)

Case ID No. 46857

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102097839

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code §§ 305.125(1) and 319.5(b), and TPDES Permit No. WQ0010746001 Monitoring and Reporting Requirements No. 1

Violation Description

Failed to collect and analyze samples for Escherichia coli daily average and daily maximum concentrations for the monitoring period ending July 31, 2012, as documented during a record review conducted on March 29, 2013.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

266 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Before NOV NOV to EDPRP/Settlement Offer

Ordinary

N/A

x

(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$169

Violation Final Penalty Total \$6,188

This violation Final Assessed Penalty (adjusted for limits) \$6,188

Economic Benefit Worksheet

Respondent City of Kenedy
Case ID No. 46857
Reg. Ent. Reference No. RN102097839
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	29-Mar-2013	28-Feb-2014	0.92	\$12	n/a	\$12
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to update operational guidance and conduct employee training to ensure that all reporting requirements are met (\$250). Date required is the record review date. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$150	1-Jul-2012	31-Jul-2012	1.00	\$8	\$150	\$158
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct sampling and analysis for Escherichia coli. Date required is the start date of the monitoring period. Final date is the end date of the monitoring period.

Approx. Cost of Compliance \$400

TOTAL \$169

EFFLUENT VIOLATION TABLE						
City of Kenedy						
TPDES Permit No. WQ0010746001						
Docket No. 2013-0961-MWD-E						
Months	NH ₃ -N Daily Avg. Conc.*	NH ₃ -N Daily Max. Conc.*	NH ₃ -N Daily Avg. Loading*	Chlorine Instantaneous Max. Conc.**	<i>E. coli</i> Daily Avg.**	<i>E. coli</i> Daily Max.**
	Limit = 3 mg/L	Limit = 10 mg/L	Limit = 38 lbs/day	Limit = 0.1 mg/L	Limit = 126 CFU/100 ml	Limit = 394 CFU/100 ml
January 2012	5	35.2	53.2	c	c	c
August 2012	c	c	c	c	948	2,419
September 2012	c	c	c	c	995	2,419
November 2012	c	c	c	0.17	c	c
December 2012	c	c	c	0.23	c	c

NH₃-N = ammonia nitrogen

E. coli = *Escherichia coli*

Avg. = Average

Conc. = Concentration

Max. = Maximum

* = Interim Effluent Limitations and Monitoring Requirements

mg/L = milligrams per liter

lbs/day = pounds per day

CFU/100 ml = colony forming units per 100 milliliters

c = compliant

** = Final Effluent Limitations and Monitoring Requirements



Compliance History Report

PUBLISHED Compliance History Report for CN600528459, RN102097839, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN600528459, City of Kenedy

Classification: SATISFACTORY

Rating: 3.46

Regulated Entity: RN102097839, CITY OF KENEDY WWTP

Classification: SATISFACTORY

Rating: 8.32

Complexity Points: 5

Repeat Violator: NO

CH Group: 08 - Sewage Treatment Facilities

Location: AT MOURNING ST, APPROX 500 FT E OF FM RD 792 AND 600 FT N OF MAIN ST IN KENEDY, KARNES CO, TX

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

WASTEWATER PERMIT WQ0010746001

WASTEWATER EPA ID TX0027774

WASTEWATER AUTHORIZATION R10746001

Compliance History Period: September 01, 2007 to August 31, 2012

Rating Year: 2012

Rating Date: 09/01/2012

Date Compliance History Report Prepared: May 14, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 14, 2008 to May 14, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Jennifer Graves

Phone: (956) 430-6023

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 08/29/2008 ADMINORDER 2007-0154-MWD-E (Findings Order-Agreed Order Without Denial)
 Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Rqmt Prov: EFFLUENT LIMITS PERMIT
 Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.
 Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)
 Rqmt Prov: SELF-reporting Requirements PERMIT
 Description: Failure to submit monitoring results at the intervals specified in the permit as documented by a TCEQ record review.
- 2 Effective Date: 01/28/2010 ADMINORDER 2008-1104-SLG-E (1660 Order-Agreed Order With Denial)
 Classification: Minor
 Citation: 30 TAC Chapter 312, SubChapter B 312.48
 Rqmt Prov: Permit No. 04525, Section XI, Reporting PERMIT
 Description: Failure to submit the annual sludge summary by September 1 of each year.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(c)

30 TAC Chapter 312, SubChapter A 312.4(a)

Description: Failure to have a valid permit when a permit is required.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	May 31, 2008	(535381)
Item 2	June 25, 2008	(691335)
Item 3	August 20, 2008	(712243)
Item 4	October 14, 2008	(712245)
Item 5	January 20, 2009	(728563)
Item 6	April 07, 2009	(751646)
Item 7	April 09, 2009	(751648)
Item 8	June 14, 2009	(769433)
Item 9	December 11, 2009	(807931)
Item 10	March 23, 2010	(796857)
Item 11	March 24, 2010	(807932)
Item 12	October 20, 2010	(874328)
Item 13	December 07, 2010	(888400)
Item 14	December 20, 2010	(896700)
Item 15	January 14, 2011	(902689)
Item 16	April 22, 2011	(926137)
Item 17	June 08, 2011	(938451)
Item 18	August 09, 2011	(953065)
Item 19	October 20, 2011	(965754)
Item 20	November 22, 2011	(977966)
Item 21	January 20, 2012	(984731)
Item 22	April 23, 2012	(1003919)
Item 23	May 08, 2012	(1016865)
Item 24	August 23, 2012	(1031986)
Item 25	October 27, 2012	(1047139)
Item 26	November 20, 2012	(1062644)
Item 27	February 20, 2013	(1079870)
Item 28	March 21, 2013	(1089732)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1	Date: 08/31/2012 (1062642)	CN600528459	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
2	Date: 09/30/2012 (1062643)	CN600528459	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
3	Date: 11/30/2012 (1062645)	CN600528459	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF KENEDY
RN102097839**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2013-0961-MWD-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Kenedy ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a wastewater treatment plant located at Mourning Street, approximately 500 feet east of Farm-to-Market Road 792 and 600 feet north of Main Street in Kenedy, Karnes County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 28, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Thirty-Seven Thousand Six Hundred Eighty-Seven Dollars (\$37,687) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Thirty Thousand One

Hundred Fifty Dollars (\$30,150) of the administrative penalty and Seven Thousand Five Hundred Thirty-Seven Dollars (\$7,537) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent, by February 28, 2013:
 - a. Reduced the chlorine feed and/or increased the sulfur dioxide to address the chlorine issues and recycled the filtrate water back into the aerobic digester and pumped the anaerobic sludge back into the digester to address the ammonia nitrogen issues;
 - b. Implemented better sampling methods and increased the chlorine prior to dechlorination to address *Escherichia coli* ("*E. coli*") issues; and
 - c. Returned to compliance with Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010746001 permitted effluent limits.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0010746001 Interim and Final Effluent Limitations and Monitoring Requirements Nos. 1 and 2, as documented during a record review conducted on March 29, 2013, and shown in the table below:

EFFLUENT VIOLATION TABLE						
	NH ₃ -N Daily Avg. Conc.*	NH ₃ -N Daily Max. Conc.*	NH ₃ -N Daily Avg. Loading*	Chlorine Instantaneous Max. Conc.**	<i>E. coli</i> Daily Avg.**	<i>E. coli</i> Daily Max.**
Months	Limit = 3 mg/L	Limit = 10 mg/L	Limit = 38 lbs/day	Limit = 0.1 mg/L	Limit = 126 CFU/100 ml	Limit = 394 CFU/100 ml
January 2012	5	35.2	53.2	c	c	c
August 2012	c	c	c	c	948	2,419
September 2012	c	c	c	c	995	2,419
November 2012	c	c	c	0.17	c	c
December 2012	c	c	c	0.23	c	c
<p>NH₃-N = ammonia nitrogen Avg. = Average Conc. = Concentration Max. = Maximum * = Interim Effluent Limitations and Monitoring Requirements ** = Final Effluent Limitations and Monitoring Requirements</p> <p>mg/L = milligrams per liter lbs/day = pounds per day CFU/100 ml = colony forming units per 100 milliliters c = compliant</p>						

- Failed to collect and analyze samples for *E. coli* daily average and daily maximum concentrations for the monitoring period ending July 31, 2012, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.5(b), and TPDES Permit No. WQ0010746001 Monitoring and Reporting Requirements No. 1, as documented during a record review conducted on March 29, 2013.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Kenedy, Docket No. 2013-0961-MWD-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure each parameter specified in the permit is properly monitored, in accordance with TPDES Permit No. WQ0010746001, Final Effluent Limitations and Monitoring Requirements No. 1;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and

may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

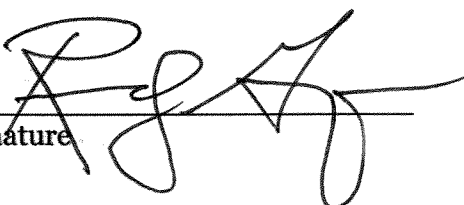
10.4.13
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

7/16/2013
Date

Randy Garza
Name (Printed or typed)
Authorized Representative of
City of Kenedy

Mayor, City of Kenedy
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.